

# EXHIBIT E

**FENWICK & WEST LLP**

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February 15, 2006

WELLS FARGO BANK, N.A.

EWAL WELLS FARGO BANK, N.A.  
DIREC Die (653) 335-7647

**VII E-MAIL**

Elizabeth A. Leff, Esq.  
Rothschild, Figg, Ernst & Manbeck, P.C.  
1425 K Street, N.W., Suite 800  
Washington, D.C. 20005

Re: CL) Intellectual' 1' rnl ertt flulclrrrgs, LLC4 v. Amazon eorn, Inc.:

Dear Elizabeth:

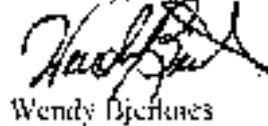
I received your three relatively lengthy letters of yesterday afternoon, which addressed a variety of issues that cannot possibly be responded to before our meet and confer conference of tomorrow morning. as You request. Moreover, ou continue to ignore most of our ongoing concerns regarding Neintifis' wholesale failures in providing responses to various discovery requests, or you state that Plaintiff improperly intends to ysitlthold compelled information merely because .mazon. eom's responses \\ere due a week prior to Plaintiff's. Your unilateral demand that we respond to all of the issues you raise in all three of your letters in less than two days, while not providing responses to our concerns, is inappropriate.

I. therefore, suggest that at tottnorrow 's meet and confer telephone-conference, we limit the discussion to the agreed-to, Tell-covcried and overlapping issues regarding:

- 1) Stipulated Protective Order;
- 2) Amazon.com's ohiECTION to the term "customer recommendation feature"; and
- 3) Plaintiffs failure to provide its Infringement Contentions and adequately provide information regarding conception and reduction to practice of the purported inventiott(s) claimed in the patent-in-suit in its Interrogatory Responses.

The parties can then fully respond to other outstanding issues, and it necessary, have a meet and confer regarding any remaining disagreements about those issues at an appropriate time.

Sincerely,



Wendy Bjerknes

cc: Steven Balk: 1

# EXHIBIT F



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February 21, 2006

WENDY E. EROTO, ESQ.

EMAIL: WBJERKNESE@FENWICK.COM  
DIRECT DIAL 1650) 335-7647

VIA E-MAIL

Elizabeth A. Leff, Esq.  
Rothwell, Figs., Ernst & Manbeck, P.C.  
1425 K Street, N.W., Suite 800  
Washington, D.C. 20005

*Re: CD Intellectual Property Holdings, LLC v. mcle.nrr.corri, Inc..*

Dear Elizabeth:

This letter responds to your letter of February 14, 2006 and your colleague's letter of today, February 21, 2006, which regarded CD's and Amazon.com's Interrogatory Responses. CD's and Amazon.com's Document Responses will be addressed under separate cover.

Regarding your letter of today, you indicate that you are unable to have a meet and confer after 1 p.m. EST on Thursday, February 23, and so suggested Wednesday, February 22 or before 1 p.m. EST (i.e. before 10 a.m. PST) on Thursday, February 23. Unfortunately, I have a meeting in another case on Wednesday, February 22 and have a meeting of uncertain duration on the morning of Thursday, February 23. Given our respective conflicts, I suggest we have a meet and confer on Friday, February 24 at 11 a.m. PST. Please let me know if that day and time work for you.

Regarding CD's Interrogatory Responses, you failed to respond to most of the issues I have raised. CD made virtually all of the same objections as Amazon.com. Yet, you failed to indicate what information CD is withholding with respect to each objection, despite your demand for this same information from Amazon.com. Please provide this information prior to our meet and confer.

In particular, regarding General Objection No. 8, does CD intend to withhold information based on its objection that discovery is "likely to depend on construction of claim terms of the '370 patent"? If so, please identify what information is being withheld.

Regarding CD's General Objection No. 10, please identify if you are withholding information because it is outside of a "relevant time-period." Please also identify what time limitations CD imposed for each of its Interrogatory Responses, and the basis for **such** time limitations. You assert that the relevant time frame for Amazon.com interrogatory Responses is at least from 1995 to the present. If you assert that the relevant time frame for CD's Interrogatory Responses is different, please indicate why it is different.

Regarding CD's General Objection No. 11, please identify for each of Plaintiffs' Interrogatory Responses those you have failed to answer in whole or in part because they "call for a legal conclusion" and your legal basis for not providing this discovery.

Elizabeth A. Leff, Esq,  
February 21, 2006 Page  
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Regarding CD's General Objection No. 14, please identify for each of Plaintiffs Interrogatory Responses what information you are withholding because it is "unreasonably cumulative or duplicative"

Regarding CD's General Objection No. 18, please identify for each of Plaintiffs Interrogatory Responses what information you are withholding because it is unduly burdensome.

Regarding CD's General Objection No. 19, please identify what is "vague and ambiguous" about Amazon.com's Instruction No. 2 and please identify how you interpreted this instruction,

Regarding CD's Response to interrogatory No. I, which calls for CD's "Infringement Contentions," a defined term, you state in your February 14, 2006 letter that you "do not understand what [we] mean by Four] request for CD's Infringement Contentions." Your purported ignorance is bewildering, and you have failed to identify what is confusing to you. In any event, as I explained at our **meet** and confer we request a claim chart that identifies, element by element for each asserted claim, how each accused feature infringes that claim according to your construction (not the claim terms (the Court's claim construction should then be used after it issues its claim construction). You have failed to do this even for the single accused feature. Please do so before the parties meet and confer.

You otherwise state in that same letter that "[a]fter Amazon substantively responds to CD's Interrogatory Request No. I (and provides the requested discovery on these features) CD will further respond to Amazon's Interrogatory No. 1 CD has reserved its right to supplement its response and fully intends to do so." This is a misstatement of the law. CD's withholding of any relevant information that you have is improper and cannot be conditioned on what discovery Amazon provides. I asked repeatedly in our meet and confer whether CD has provided all information it currently possesses in response to this interrogatory, and you refused to answer that question. Please properly and fully put forth CD's infringement contentions.

Your suggestion in your February 14, 2006 letter that Plaintiff has no burden to specifically identify features on the Amazon.com website that are accused to infringe the patent in-suit is just wrong. If nothing else, Amazon.com's Interrogatory Request No. I specifically compels you to do so. Yet, you refuse. Instead, you assert that it is Amazon.com's burden to provide discovery regarding any and all features that you assert in correspondence that may (or may not) infringe Plaintiff's patent. This is not allowed. Plaintiff may not go on a fishing expedition for possible claims. Your reliance on Federal Rule of Civil Procedure ("FRCP") 26 is misplaced. FRCP 26 only allows discovery related to the claims and defenses at issue in a lawsuit. Broad discovery related to the subject matter of the lawsuit is only allowed pursuant to an order of the court and only after "good cause" for such discovery is established. As explained in previous correspondence, you fail to put forth good cause.

As also noted in previous correspondence, publicly available information conclusively demonstrates that these additional features you identified in correspondence do not infringe. That you are only willing to identify these additional features for which you seek discovery correspondence, as opposed to identifying them in CD's Interrogatory Responses to specifically accuse them of infringement, is telling that you seek this discovery because it is purportedly related to the "subject matter" of the patent-in-suit is also telling. Hence, my statement that CD

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does not and cannot specifically accuse these features of infringement is not a mischaracterization but an accurate reflection of even your own position.

Moreover, given our refusal to agree to a Stipulated Protective Order provision that disallows those who have viewed Amazon.com's highly confidential and source code material from rendering patent prosecution advice related to the "subject matter" of the patent-in-suit and to the "business and technical operations" for any competitors, let alone affiliated companies, we have good cause to refuse this otherwise overbroad and burdensome discovery that implicates highly confidential information that you claim relates to the "subject matter" of the patent-in-suit.

CD's Response to Interrogatory No. 3 was recently supplemented only to provide dates for the claimed conception and reduction to practice of the invention. The answer still fails to address any purported diligence in reducing to practice the invention. You have otherwise only identified by name Charles Stack and Adam Wallace as having information responsive to this request. The interrogatory, however, also specially asks for the "substance of the information" each person has corroborating its conception, reduction to practice, and any diligence in reducing the claimed invention to practice. Please provide this information, as required.

Supporting information called for Interrogatory No. 3 is presumably incorporated in your reference to RCP 33(d), yet there is no identification of what documents **are relied upon** to support the purported dates of conception and reduction to practice or how those documents support the contentions. Please identify which portions of these documents you contend evidence or corroborate the claimed conception and reduction to practice date. In addition, please indicate whether the production of documents with respect to these issues is complete.

Also, you fail to indicate whether [redacted] intend to rely upon documents produced by Charles Stack and Adam Wallace pursuant to the subpoenas served upon them on these issues. } [you intend to do so, please identify all documents on which you intend to rely and how those documents evidence or corroborate the claimed conception [redacted] reduction to practice date.

[redacted] event, usocid in previous correspondence: c.yunrporrrc!iuuccmnFBP3<sup>2</sup>(6)im improper here. Please detail in full the events regarding the conception and reduction to practice *and any* diligence in reducing to practice the any inventions claimed in the patent-in-suit, as required.

A final issue regarding CD's response to Interrogatory No. 3 is that CD states that an embodiment of the invention was put "online" less than one year after the reduction to practice, yet fails to provide any information regarding this alleged disclosure. Here, you do not even indicate that you will produce documents pursuant to RCP 33(d). This answer is wholly insufficient. Please provide the full factual basis you have that the claimed invention was not "abandoned, suppressed, concealed," as required by the interrogatory request.

Please indicate if CD's answer to Interrogatory No. 4 is complete. There is no basis to withhold the identity of any person based on any of CD's objections. If you are withholding the identity of any person based upon such an objection, please provide the legal basis for that objection.

Elizabeth A. Leff, Esq.  
 February: I , 2006 Page  
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limning to Amazon.com's Interrogatory Responses, Amazon.com's objection to the definition of "customer recommendation feature" is entirely appropriate, As I have repeatedly explained, including the explanation provided above, Amazon.com will only provide discovery regarding specifically accused features. So far, CD has accused only one Feature of infringement. If CD is unwilling to accuse and identify in any of its discovery responses other features that infringe the patent-in-suit, that alone demonstrates that CD knows that these features do not even arguably infringe. In fact, there is no basis to assert that other features infringe any claim in the patent-in-suit, as can be easily seen from publicly available information. As discussed above, you attempts to otherwise obtain this incredibly burdensome discovery (which could potentially implicate hundreds of thousands, if not more, pages of documents and other significant parts of Amazon.com's extremely confidential source code) is unwarranted.

Regarding Amazon.com subsidiaries, as we discussed in our meet and confer, the information you provided in your February 14, 2006 letter does not change our position that only Amazon.com will respond to Plaintiffs discovery requests. You have not established that any subsidiary of Amazon.com has any possibly relevant information that would not otherwise exist at Amazon.com. Independent companies that are not part of this lawsuit should not be burdened with your overbroad discovery demands. Moreover, you have not even attempted to establish that Amazon.com or any other subsidiary is within Amazon.com's control.

Regarding Amazon.com's objections that Plaintiff's Interrogatory Requests are cumulative, duplicative and call for information that is equally available to either party, I am not quite sure what you are asking for. In any event, Amazon.com does not intend to produce multiple versions of the same document. Publicly available information is a common example of information that is equally available to both parties.

Regarding Local Rule 262 and the production of confidential documents, as I have repeatedly indicated, we will produce documents and information where they are adequately protected on an outside counsel's eyes only basis. We will otherwise seek a protective order to ensure additional protection of those materials that require it, such as source code. The parties are currently negotiating such a protective order, and to the extent the parties cannot agree as to key terms, Amazon.com will move to seek a protective order that includes them. Amazon.com certainly wishes not to burden the Court with such a motion and hopes the parties can come to an agreement.

Regarding General Objection No. 10, you fail to identify what it is that you purportedly do not understand. In any event, as we otherwise discussed at our meet and confer, if for some reason we cannot produce a document or provide information because private customer information cannot be adequately redacted or otherwise protected, we will identify it for you.

Regarding General Objection No. 11, so long as CD agrees to do the same, we will agree to identify any information that is being withheld because it is the confidential information of a third party and whether Amazon (or its representative) has contacted the third party to gain approval for production.

Regarding relevant time frames, Amazon.com will provide prior art dated prior to the filing of the patent-in-suit. For versions of accused features that were or are on the website subsequent to the issuance of the patent, Amazon.com will provide development documents that

Elizabeth A. Leff, Esq.  
February 21, 2006  
Page .5.

may predate the patent issue date. With regard to all other relevant documents and information, in particular those documents and information related to damages, Amazon.com will provide information after the patent issued to the present.

As noted above, you ignored my inquiry regarding CD's objection that the requests were not limited to a relevant timeframe. Please indicate the information CD is withholding pursuant to this objection, and indicate the timeframes you applied for each of Plaintiffs Interrogatory Responses and your basis for doing so.

Regarding Rule 33(d) responses to interrogatories requesting the identification of individuals, none of the authority you cite states this impermissible. You complain that specific Bates ranges were not provided, however, there is not a specific Bates range provided in any of CD's Interrogatory Responses incorporating Rule 33(d). Please explain why you put forth Interrogatory Responses you assert are improper. If CD agrees to put forth Bates ranges, Amazon.com will do the same once its production is complete. Both parties have not yet completed their productions, and therefore, such identification is premature.

Regarding Amazon.com's response to Interrogatory No. 9, Amazon.com will supplement its response when CD finally provides its infringement contentions. It is, of course, at best difficult, if not impossible, to fully put forward non-infringement contentions when Plaintiff has utterly failed to put forward any infringement contentions. Yet, Amazon.com tried to do so.

We did not "refuse to answer" Interrogatory 15. Our answer, as repeatedly explained to you in correspondence, is complete as of this time.

Interrogatory 17 seeks the "date of conception, reduction to practice, and date of first public use" and the "identity and role of all persons involved in the conception, reduction to practice, and date of first public use" of Amazon.com's "customer recommendation features." Such concepts seek discovery regarding a patent-in-suit - but Amazon.com is not asserting a patent in this lawsuit. explain how this very specific patent related discovery is relevant to Plaintiffs infringement claim, which is based solely on its own patent. Interrogatory 18 similarly improperly seeks discovery related to an Amazon.com patent. In any event, Amazon.com may supplement its responses to these interrogatories when Plaintiff fully responds to Amazon.com's interrogatory requests.

Sincerely,



Wendy Hicknes

cc: Steven Balick  
C. Nichole Gifford



# EXHIBIT G



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February 24, 2006

WENDY BJERKNES

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VIA E-MAIL

Elizabeth A. Len'. :ELI.  
 Rothwell, Figg, Hornst & Manbeck, P.C.  
 1425 K Street, N.W., Suite 800  
 Washington, D.C. 20005

Re: (Delaware Intellectual Property Holdings, LLC v. Interoff. Cora, Inc.)

Dear Elizabeth:

Regarding a meet and confer for Monday, I am available at 12:00 p.m., PST. Please be prepared to address the following issues at the meet and confer:

Insufficient responses to the subpoenas served on Pothwell, Figg and Vincent DeLuca (February 14, 2006 letter);

Plaintiff's insufficient interrogatory Responses and Document Responses and improper objections (February 8, 9, and 21 letters); and

Withdrawal of the improper 30(b)(6) Deposition Notice (see February 21 letter).

I have not received any response to these letters. While your February 14, 2006 letter purportedly addressed my February 9, 2006 letter regarding CD's Document Responses, you failed to address any of the concerns I raised in that letter other than to merely state that you will provide relevant time period restrictions once Arnuzon.com does. I provided such date restrictions in my February 21, 2006 letter to you but have not received any mention of what time period restriction CU has or will apply. Please address all of the concerns addressed in all of my letters to you,

Sincerely,

Wendy Bjerknes

cc: Steven Balick  
 C., Nichole Gilkard

# EXHIBIT H

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February 28, 2006

WENDY BJERKNES

EMS S T A I E R h' d E S @ i FENWICK.CO  
s r DIAL (650) 335-7647

VIA il-I'v1AIL

C. Nichol. (iiflord. Esq.

Roth \ell. I it, \_p, I rest&, 'vlanbeck, P.C.

425 K Street, .LW., Suite 800

W'ashirteten. D.C. 20005

Ke : CD huellectual, Propret Holdings, T.L.C.... v, A m a ' o ? , c oot, Tnc.

Dear Nichols:

This letter confirns your agreement that no person who has reviewed n~azon.corrz's highly Confidential Outside Counsels' Eyes Information will directly or indirectly provide any patent prosecution advice, as put forth in various provisions in the Stipulated Protective Order. y ly letter is not intending to have you agree to anything not expressly put forward in the Stipulated Protective Order, which I am attaching to the same email as this letter. Please confirm in writin<sup>s</sup> that you agree to all terms put forward in the Stipulated Protective Order relating to " highly Confidential — Outside Counsels' Eyes" material by the end of tomorrow.

In our meet and confer of yesterday. you indicated you \ould get back to me by the end of the day today regarding:

Whether you will withdraw your 30(bX6) Notice of I )eposition; and

The identification of Eric Bock, a person you seek to have access to Arnaron tom's confidential material. You first put forward his name on February 14, 2006, yet you have failed to identify by position and eclntpany<sup>=</sup>.(ies) he works for, despite my repeated requests for this information. I hawk:. asked and you have previously promised this information, and I do not understand the delay.

The close of your business day has almost concluded, and you still have not provided this information. Please do by the cad of the day, as promised.

At the meet and confer. I indicated I would pet back to you on the following issues:

Regarding the Stipulated Protective Order. I offered to propose alternative language for provisions regarding that agreement for additional printing of source code and to have more than two experts examine the source. code not be -unreasonably withheld." I suggest the following language: Should the producing party refuse to agree to [the printing of additional source code] or an additional expert's ability to review the source code], the receiving party may move the Court to determine "the need for the request exceeds and is reasonable in light of the increased security

c. Nicole (i r i lhrd, Esq.  
 February 25, 2006  
 Page 2

As I explained in our meet and confer and in previous correspondence, our compromises regarding source code provisions in the Stipulated Protective Order were made so that the Court would not be burdened with motion practice. If you nevertheless insist on bringing such a motion, this purpose is defeated. Thus, should you move, we will in turn seek the Court to adopt our initial proposal regarding source code provisions as put forth in our initial draft, which was modeled directly on the default standard for the protections of source code that I have already provided to you. Please let me know if this will be necessary.

Regarding relevant time periods for discovery responses, as I indicated on the phone and in previous correspondence, what is relevant depends on the information being sought. I have thus far provided the main categories of issues covered in a patent infringement lawsuit, prior art, development of the implementation of the features accused of infringement, and damages, and the relevant time periods with respect to each of the categories. You otherwise asked about documents related to Stack. 1300ks.com, and Bookstacks.com-a. I asked why these are relevant to plaintiff's patent infringement lawsuit, and you would not respond. Please explain why these documents are relevant. The only other category of information or documents requested that do not otherwise fall into these categories ask for information that relate to the various entities that have served as Plaintiffs in this lawsuit. Please explain why documents prior to the issuance of the patent that relate to the various Plaintiffs are relevant. I see no other category of information requested not covered by these categories. If there is a category that you believe does not fit within any of these, please let me know.

Regarding your email of yesterday about our meet and confer, what you describe is precisely how I would describe your own behavior, I asked you repeatedly to lower your voice, to improve your tone and sarcasm, and implored you that these meet and confer need not be unpleasant (as my colleague can confirm). In any event, your attempt in your email message to justify hanging up the phone once the *ilrree-horn-loose* meet and confer finally turned to addressing CD's insufficient responses and unjustified objections -- after I had answered all of your questions regarding Amazon.com's responses and objections -- just exposes your tactic here. After hanging up the phone, I called Elizabeth Leffhack immediately, and she did not return the phone. I asked her to call me back, and she did not.

The most prominent example of your evasiveness is your first refusing to answer questions regarding CD's specific objections. 15 minutes or so passed while you were presumably discussing (you muted the phone) the then pending question: whether you would provide additional factual information supporting the purported conception, reduction to practice and diligence in reduction to practice. As since you are asserting a priority date prior to the filing of the patent-in-suit, this information must be provided. You demanded this to take this time, not me, by stating "hold on." You then got back on the phone after that long delay, said you would not answer my question, and hung up the phone. I did not even have the opportunity to address the other issues we had with respect to this same interrogatory response, let alone other issues.


Regarding your proposal for an additional meet and confer, as I understood your position, until you hung up the phone, you will rely on your positions you put forward in your letter dated

C. Nicole Gifford, Esq.  
February 28, 2006 Page-  
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February 27, 2000-and in previous correspondence. You refused to address 'CD's specific objections. You refused to answer questions regarding whether..your answers were consistent as of this time. I have answered the questions you asked in the past. If those answers do not change your position, there is nothing left to discuss.

If you are willing to compromise with respect to any position put forth and in your letter, let me know. and we will discuss it. I propose 13 a.m. on Friday. Let me know by tomorrow if such a meet and confer will be useful. Otherwise, I will rely on our positions as stated.

Sincerely,



Wendy Bjorknes

Steven Baliek  
Elizabeth Leff

/x~w40311.n11 245479 1

# EXHIBIT I

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March 8, 2006

WENDY BJERKNES

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DIRECT DIAL (650) 335-7647**VIA E-MAIL**

C. Nichole Gifford, Esq.  
Rothwell, Figg, Ernst & Manbeck, P.C.  
1425 K Street, N.W., Suite 800  
Washington, D.C. 20005

Re: CD Intellectual Property Holdings, LLC v. Amazon.com, Inc.

Dear Nichole:

This letter responds to your February 27, 2006 and March 2, 2006 letters. Your mischaracterization of our meet and confer is nothing short of shocking. I again implore you to improve your tone in these discussions. I refuse to engage in this, and I therefore will just address the real issues at hand below.

Your letter addresses Stipulated Protective Order issues, which I believe are now moot as the parties have agreed to follow the Stipulated Protective Order that was submitted to the Court.

Regarding relevant time frames, we seem to agree that the relevant time frame depends on the issue at hand. An arbitrary date that relates to all issues as you otherwise propose, therefore, does not make sense. Moreover, the time frame you propose is greatly overbroad. The patent-in-suit issued in 2004 and yet you call for a broad search of documents going back to 1995. You have not justified such broad discovery. To the extent any general relevant time frame applies, the time period that extends from the time the patent issued to the present addresses the relevant time period is the appropriate one. There are issues that call for documents prior to that time frame, however. The most obvious ones are documents and issues related to invalidity and unenforceability of the patent-in-suit, hence documents related to prior art, the prosecution history of the patents, etc. will be and have been produced. We will also produce documents relating to the development of features specifically accused of infringement.

At the meet and confer, you otherwise identified that you seek documents related to Charles Stack, Books.com and Bookstacks.com prior to the date the patent issued. I asked you why Amazon should have to search for such documents dated prior to the issuance of the patent, that is, why they would be relevant. You gave me no such reason. I asked you again in my letter on February 28, 2006. In your March 2, 2006 response letter, you again provided no such reason. I ask again. Perhaps more detail would help explain why this is an issue. For example, Books.com is a domain name that was acquired by Barnesandnoble.com. Therefore, a document



C. Nicole Gifford, Esq.  
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request that asks for all documents that relate to Books.com calls for all sorts of irrelevant documents. This request, therefore, needs to be tailored, which is why I ask you to explain more specifically about what time period you are seeking, what scope you are seeking, and your basis for doing so. Simply asserting that all such documents are relevant is incorrect and not productive. I note that in document requests that Amazon put forth seeking similar documents, CD objected that "not all documents relating to Book Stacks Unlimited, Books.com or Bookstacks.com are relevant to this litigation or reasonably likely to lead to the discovery of admissible evidence" and communications Charles Stack has "may have nothing whatsoever to do with the '370 patent" and are therefore "not relevant." *See e.g.*, CD's Responses to Document Requests Nos. 29 (a request for which you refused to provide any documents) and 63. We agree, and therefore will produce documents and information that concern the patent-in-suit, even if they are dated prior to the issuance of the patent-in-suit, if the information is not otherwise objectionable, for instance, it is privileged. This scope of what is relevant comports with your own assertion of what is relevant to this lawsuit.

In my February 28, 2006 letter, I otherwise indicated that in my review of the first set of document and interrogatory requests, the only other category of documents or information that could possibly have a relevant time period prior to the issuance of the patent-in-suit are documents related to the various plaintiffs in the lawsuit. Is there a reason that such documents or information created prior to the issuance of the patent-in-suit would be relevant? If yes, please explain.

Finally, I asked you in that same letter to otherwise identify any other categories of information for which you seek documents or information prior to the issuance of the patent-in-suit. You did not do so. I am happy to consider any other such categories you identify, but since you have not identified any, I can only assume that you agree that there are none.

We have made a reasonable attempt to have CD agree that it must provide all information it has regarding and supporting its infringement contentions and the asserted dates of conception, reduction to practice, and diligence in reducing to practice, as called for by Amazon.com's Interrogatory Request Nos. 1 and 3. CD's consistent position is that it will not do so, or that it will only supplement after Amazon.com does and with no specificity as to what information will be provided. This is unacceptable.

Because CD is the Plaintiff and can certainly at least identify CD's contentions that provided the basis for its filing patent infringement lawsuit, there is no excuse for failing to provide or explain CD's complete basis for its allegation of infringement, as requested in Interrogatory No. 1. CD's refusal to do so effectively shifts the burden to Amazon.com to guess as to the basis of infringement and to correspondingly provide its non-infringement contentions.

Regarding CD's asserted dates of conception and reduction to practice, and diligence in reducing to practice prior to the filing date of the patent-in-suit, before CD may rely on any such

C. Nicole Gifford, Esq.  
March 8, 2006 Page 3

date, it is obligated to produce all supporting factual information, as called for by Request No. 3 and is otherwise required by case law. *See e.g. Cooper v. Goldfarb*, 154 F.3d 1321, 1330 (Fed. Cir. 1998) (holding that inventor's date of reduction to practice requires independent corroboration) and *Price v. Symsek*, 988 F.2d 1187 (Fed. Cir. 1993) ("conception by an inventor, for the purpose of establishing priority, cannot be proved by his mere allegation" and must be corroborated); *In re Jolley*, 308 F.3d 1317, 1328 (Fed. Cir. 2002) ("corroboration is required to support an inventor's testimony regarding his reasonable diligence in pursuit of the invention"). *Fresenius Med. Care Holding, Inc. v. Baxter Int 'l, Inc.*, 224 F.R.D. 644, 650 (N.D. Cal. 2004) (motion to compel response to interrogatory seeking information regarding conception and reduction to practice without reference to Rule 33(d) was granted). This also requires to you to fully provide information in the response you labeled 3E. CD stated that the invention was not abandoned, suppressed or concealed and that there was a public disclosure of the invention, yet not even a 33(d) response is provided for corroboration of such bald assertions. You have cited no case that supports your position that you need not provide this information called for by the interrogatory request.

These same cases also provide the basis for why we are entitled to the information requested in Interrogatory No. 5, which seeks information related to embodiments of each asserted claim of the patent-in-suit, including that related to the "Affinity" service, which is the system specifically identified in the patent-in-suit. Such information related to embodiments of the inventions claimed in the patent-in-suit is also clearly related to damages. Moreover, a Rule 33(d) response is an inadequate response to either of these interrogatory requests. *Goodrich Corp v. Emhart Indus.*, 2005 U.S. Dist. LEXIS 25158, \*10 (C.D. Cal. Oct. 12, 2005) ("In determining the relative burdens to the parties, the court must balance the costs of research, the nature of the business records, and the familiarity of the interrogated party with its own documents.") We suggest one last meet and confer on this issue on Friday, March 10, 2006 at 11:30 am PST. Please let me know if this date and time work for you.

Regarding CD's Document Responses, at the last meet and confer, I attempted to go through each of CD's specific objections to determine on what basis CD is withholding documents. You refused to do this. Short of going through each of CD's specific objections to determine the basis for CD's refusal to produce document responsive to these requests and to resolve any issues that CD may have, I am at a loss as to how to do this. Please be prepared to discuss CD's specific objections at the meet and confer mentioned above. Notably, CD has refused to indicate that it will produce any documents in response to requests Nos. 13, 14, 15, 17, 23, 24, 25, 27, 28, 29, 30, 32, 33, 35, 36, 37, 38, 43, 44, and 60. Unless CD agrees to produce documents, we must discuss each of the specific objections stated therein, since CD refuses to produce any documents based upon them.

A number of specific objections in CD's Responses to Documents Requests state that the requests fail "to state with particularity the document being sought" or ask Amazon.com to "clarify the documents it is requesting" or make a similar statement. These objections do not

C. Nicole Gifford, Esq.  
March 8, 2006 Page 4

support CD's wholesale refusal to produce relevant documents. It also is not a proper objection to the requests at issue, as they do sufficiently identify the documents sought. *See e.g.*, 14, 15, 17, 23, 24, 25, 27, 29, 30, 32, 37, 38, 43, 44, and 60. If you require further clarification, please identify what information you need at the meet and confer.

A number of specific objections state that requests calling for documents regarding "related patents/applications" are not relevant to this lawsuit. *See e.g.*, Request Nos. 13, 24, 27, 28, 29, 35, 36, 37 and 44. Documents relating to patent applications, including pending and abandoned applications, are relevant because they may shed light on proper claim interpretation of the patent-in-suit. *Microsoft Corp. v. Multi-Tech Sys., Inc.*, 357 F.3d 1340, 1349-50 (Fed. Cir. 2004); *Tristrata Tech., Inc. v. Neoteric Cosmetics*, 35 F.Supp.2d 370, 372 (D. Del. 1998). Therefore, please produce such documents. Moreover, this objection does not support CD's wholesale refusal to produce documents otherwise called for by the request.

Other responses state that requests calling for documents related to "embodiments" of the inventions claimed in patent-in-suit are not relevant to this litigation. *See e.g.*, Request No. 13, 33, 38. As discussed above, documents regarding embodiments or implementations of the inventions claimed in the patent-in-suit are relevant to priority date issues as well as can be related to damage issues. Your other objections do not provide a sufficient basis for your refusal to indicate that you will produce responsive documents.

Your objections in response to Request No. 14 are not comprehensible. In any event, the request calls for documents related to the disclosure of the invention. These documents are relevant to several issues. Disclosure of the invention prior to the filing of a patent application can render the patent invalid. 2 CHISUM ON PATENTS § 5.03[3][f] ("the inventor's own work disclosed in the form of a patent, printed publication, or public use with a date more than one year before the application for a patent on the invention becomes prior art as to the invention"). This is also relevant to issues of corroboration on the purported dates of conception, reduction to practice, and diligence in reducing to practice, as discussed above. Please indicate that you will produce these highly relevant documents.

I do not understand your objections in response to Request Nos. 15 and 17. The requests call for documents relating to any "use" of the claimed invention, whether authorized or not. None of your objections justify a complete refusal to produce documents.

Request No. 23 calls for documents related to any license or offers to license the patent-in-suit – a relevant and proper request. That there was a typographical error in the request does not justify your refusal to respond.

Request No. 25 calls for documents that constitute or are related to prior art – a relevant and proper request. None of your objections justify your wholesale refusal to respond.

C. Nicole Gifford, Esq.  
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Request Nos. 29 and 30 call for communications the inventor had about the subject matter of the patent-in-suit, its related patents/applications or Book Stacks Unlimited, Amazon, or Cendant, this litigation or the claims and/or defenses therein. None of your objections excuse your complete refusal to produce documents responsive to this request. That you may find part of the request irrelevant does not excuse your refusal to provide relevant documents. Moreover, as explained above, the documents requested are relevant.

Request No. 32 calls for "All documents relating to, or corroborating, diligence in reducing to practice of each claimed invention of the '370 Patent." Your objection that Amazon must show that there is "a critical period for determining any diligence in reducing to practice" before CD will produce such documents is incorrect. If for no other reason, these documents are relevant because CD is asserting that it is entitled to a priority date prior to the filing of the patent. As discussed above, to do that, CD must show and corroborate diligence in reducing that invention to practice, unless it does not intend to rely on any diligence in establishing an earlier priority date. If you do not intend to so rely, please confirm in writing. Otherwise, produce the documents responsive to this request.

Please be prepared to discuss these issues at the meet and confer.

We also request a meet and confer on the various subpoenas that were served by Amazon.com on the various individuals and entity you represent (Mr. Stack, Mr. Wallace, Mr. DeLuca, and Rothwell, Figg) at the same time as that mentioned above. Please see my letters to dated February 14, 2006, February 24, 2006 and March 8, 2006 (sent under separate cover) at the same time.

Regarding your February 27, 2006 letter, as I explained in the meet and confer, I did not specifically respond to your February 14, 2006 letter regarding Amazon.com's Document Responses because the issues CD raised with respect to them were already addressed in conjunction with my correspondence regarding Amazon.com's Interrogatory Responses. You agreed as much in our meet and confer. I am confirming this discussion in writing.

Sincerely,  
  
Wendy Bjercknes

cc: Steven Balick  
Elizabeth Leff

23984/00403/LIT/1245984.1

# EXHIBIT J



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March 9, 2006

**Via E-Mail**

Wendy L. Bjerknes, Esq.  
Fenwick & West LLP  
Silicon Valley Center  
801 California St.  
Mountain View, California 94041

Re: *CD Intellectual Property Holdings LLC v. Amazon.com, Inc.*  
Our File No.: 3339-101\_\_\_\_\_

Dear Wendy:

I have received your two most recent letters regarding discovery issues. Although your letters are dated March 8<sup>th</sup>, they were sent to my office after the close of business on Wednesday, so I did not receive them until this morning.

Your request for a meet and confer tomorrow, one day after we received the letters is unreasonable and does not provide us with a sufficient amount of time to respond to the issues discussed therein. I am out of the office tomorrow, so I will get back to you with a proposed time for a meet and confer early next week after we have had a sufficient amount of time to review your letters and respond in writing to the issues discussed therein.

Very truly yours,

C. Nichole Gifford

CNG: erh

cc: Steven Balick, Esq.

# EXHIBIT K



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March 10, 2006

WENDY BJERKNES

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VIA E-MAIL

C. Nichole Gifford, Esq.  
Elizabeth Leff, Esq.  
Rothwell, Figg, Ernst & Manbeck, P.C.  
1425 K Street, N.W., Suite 800  
Washington, D.C. 20005

Re: *CD Intellectual Property Holdings, LLC v. Amazon.00m, Inc.*

Dear Nichole and Elizabeth:

I received your letter indicating that you would not be available for a meet and confer today. We propose having the meet and confer on Monday, March 13 at 2 p.m. EST. Please let me know if that works for your schedule.

In any event, we must have a meet and confer no later than Tuesday, March 12, 2006 at 5 p.m. EST, so that we can file Motions to Compel by March 15, 2006, if necessary. Amazon.com has raised the various insufficiencies in Plaintiffs Interrogatory and Document Responses in various meet and confers and in various correspondence for quite a while, so while this meet and confer is a final attempt to avoid motion practice, the parties have already discussed these issues at length. Regarding the subpoenas served on Mr. Stack and Mr. Wallace as well as on Rothwell, Figg and Mr. DeLuca, I have sent various correspondence regarding them (*see* my February 14, 2006, February 24, 2006 (two separate letters) and March 8, 2006 letters), as well as offered to have a meet and confer regarding them more than once, which you rejected (*see* your letters of February 27, 2006 and March 9, 2006).

Please let me know when you are available.

Sincerely,

Wendy Bjerknes

cc: Steven Balick

23984/00403/LIT/1246084,1



# EXHIBIT L



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March 13, 2006

*Via E-Mail*

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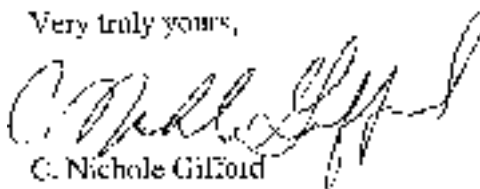
Re: *CD Intellectual Property Holdings LLC v. Amazon.com, Inc.*  
Our File No.: 3339-101

Dear Wendy:

We are not available for a meet and confer at 2 pm EST today (Monday) as you proposed in the letter you sent after 8pm EST on Friday night. We are currently working on responses to the letters we received from you on Thursday March 9<sup>th</sup>, which you should receive later today.

If, after reviewing our responses, you still wish to have a meet and confer, we will be available tomorrow.

Very truly yours,



C. Nichole Gifford

CNG:erh

cc: Steven Balick, Esq.

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